

2011 JUL -7 PM 5:02  
CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

City Council

(510) 238-7003  
FAX (510) 238-6129  
TTY (510) 238-7413

---

MEMORANDUM

---

TO: CITY COUNCILMEMBERS

FROM: NANCY NADEL, COUNCIL DISTRICT 3 & PATRICIA KERNIGHAN, COUNCIL DISTRICT 2

SUBJECT: RESOLUTION SUBMITTING, ON THE COUNCIL'S OWN MOTION, TO THE ELECTORS AT THE NEXT SPECIAL OR GENERAL MUNICIPAL ELECTION, A PROPOSED CHARTER AMENDMENT, ENTITLED, "RETURNING THE ELECTED CITY ATTORNEY POSITION TO AN APPOINTED POSITION" AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NEXT ELECTION DATE

DATE: JULY 19, 2011

---

Since 2000, the City Attorney for the City of Oakland has been an elected position serving for a four-year term. We wish to submit a ballot measure to the voters at our next election to return the City Attorney position to an appointed one.

Currently, 97.5% of California cities appoint their City Attorneys and only 2.5% have elected City Attorneys.

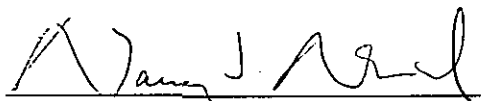
The responsibility of a City Attorney is to serve as legal counsel to the City Council, Mayor, and each department of the City. The City Attorney should be able to assist his or her client in choosing wisely from a range of lawful discretionary actions, and must not be influenced by personal interest in the political consequences of any decision by his or her client.

When the City Attorney gains his position through election by the public, he or she is subject to all the political pressures that are experienced by any other politician. When it is the public who hires and fires the City Attorney, the elected attorney always has to be concerned for his or her political future. This situation sets up the potential for divided loyalties. There is created a potential conflict of interest for the attorney between what is best for his client the City versus what is best for him or herself as an elected official. This potential duality in loyalty tends to undermine the relationship of trust that is essential in any attorney-client relationship. The City Council needs to be able to count on the City's Attorney to render advice in accordance with the best interests of the City and to have no other agenda.

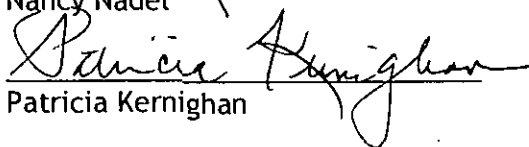
If for any reason the attorney-client relationship irrevocably breaks down, the client needs to be able to hire a new attorney. That is not possible when the City Attorney is selected only by election. The City Attorney is not the lawyer for the general public. The ability of a client, namely the City acting through its elected legislature, to hire and fire its legal counsel is critical to a properly functioning attorney-client relationship.

In summary, selecting a City Attorney through an electoral rather than an appointive process creates a significant potential for conflicts and perceptions of conflict. In order that the City of Oakland have legal representation that is free of conflicts and perceived conflicts of interest, we recommend placing this Charter Amendment before the voters at the next election to restore the City Attorney position to an appointed position.

Respectfully submitted,



Nancy Nadel



Patricia Kernighan

DRAFT

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

*M. Mordani*  
City Attorney

OAKLAND CITY COUNCIL

11 JUL -7 PM 3:40

RESOLUTION NO. \_\_\_\_\_ C.M.S

INTRODUCED BY COUNCILMEMBERS KERNIGHAN AND NADEL

---

Resolution Submitting, On The Council's Own Motion, To The Electors At The Next Special Or General Municipal Election, A Proposed Charter Amendment, Entitled, "Returning The Elected City Attorney Position To An Appointed Position" And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The Next Election Date

WHEREAS, City Charter Article IV Section 401 (1) created an elected City Attorney position that had been previously an appointed position; and

WHEREAS, the purpose of this resolution is to return that position to an appointed position; and

WHEREAS, 97.5% of California cities appoint their City Attorneys and only 2.5% have elected City Attorneys<sup>1</sup>; and

WHEREAS, the responsibility of a City Attorney is to serve as counsel to the City Council, Mayor, and each department of the City, and to render legal advice; and

WHEREAS, the City Attorney is not the lawyer for the general public or any individual or group within the City<sup>2</sup>; and

WHEREAS, the ability of a client, namely the City acting through its elected legislature, to hire and fire its legal counsel is critical to a proper attorney-client relationship; and

WHEREAS, the *Ethical Principles for City Attorneys* adopted by the City Attorneys Department of the League of California Cities states that "the city attorney should provide legal advice that avoids the appearance that the advice is based on political alignment or partisanship," and

WHEREAS, the City Attorney should be able to assist a client in choosing wisely from a range of lawful discretionary actions and must not be influenced by personal interest in the political or other external consequences of any such decision, and the City Attorney's advice must be perceived as being free of these influences; and

---

<sup>1</sup> California League of Cities website accessed June 9, 2011: <http://www.cacities.org>

<sup>2</sup> This perspective is reflected in the Model City Charter of the National Civic League Section 4.03b.

**DRAFT**

**WHEREAS**, selecting a City Attorney through an electoral rather than an appointive process creates a significant potential for such conflicts and perceptions of conflict; and

**WHEREAS**, an elected City Attorney chooses his or her own boundaries, and can become involved with various aspects of any issue, ranging from legal to policy to politics, which impacts the ability of the client to distinguish between legal, policy and political advice; and

**WHEREAS**, City Charter Article IV Sections 401 (3), (4) and (5) all relate to that position as an elected position; and therefore, be it

**RESOLVED:** That the City Council of the City of Oakland does hereby submit to the voters at the next special or general municipal election, that City Charter Article IV Sections 401 (3), (4) and (5) be put forward for elimination; and be it

**FURTHER RESOLVED**, That City Charter Article IV, Sections 401 (1), and 401(2) be amended as follows:

~~Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Council member at large appointed by the City Council and serve at the sole discretion of the City Council. If the Council members are evenly divided, the Mayor shall have a vote pursuant to Section 200 of this Charter. The City Attorney shall receive the salary set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.~~

Section 401(2). Qualifications, the City Attorney. No person shall be eligible for or continue to hold the Office of City Attorney either by election or appointment, unless he or she is a citizen of the United States, a qualified elector and resident for at least 30 days of the City or a territory lawfully annexed or consolidated, licensed to practice law in all courts of the State of California and so licensed for at least ten years preceding his or her election. (Amend by: Stats. November 1988, November 1998 and March 2002);

**FURTHER RESOLVED**, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

Measure _____. Shall the Oakland City Charter be amended to return the City Attorney to an appointed position?	Yes	
	No	

**DRAFT**

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next special or general municipal election date, to file with the Alameda County Board of Supervisors and the County Clerk certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California; and be it

**FURTHER RESOLVED:** That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to obtain printing, supplies and services as required; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk; and be it

**FURTHER RESOLVED:** The City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California